



UNITED STATES | ENGLAND | GERMANY | CHINA

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March 13, 2009

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Ms. Claire Xidis
Motley Rice LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464

Re: State of Oklahoma, et al. v. Tyson Foods, Inc., et al.
Our File No.: 51312 / 320833

Counsel:

In light of Plaintiffs' designation of witnesses who will testify about "agency response costs," I write to request that Plaintiffs supplement by April 1 their responses to Cargill Defendants' discovery requests seeking information about those costs. Further, I write to request Plaintiffs provide available dates before April 16 for the 30(b)(6) deposition of Plaintiffs' designees on agency response costs which I will notice shortly. As I stated in my email to Ms. Xidis earlier today, in the event that additional inquiry is necessary following the 30(b)(6) deposition(s), please provide available dates before April 16 for the depositions of those agency-response-costs witnesses identified on Plaintiffs' witness list.¹

In Request for Production No. 4 of its Amended First Set of Interrogatories and Requests for Production, served on August 22, 2006, Cargill Turkey Production, LLC (CTP) requested Plaintiffs "Produce all documents relating to the identification, determination, calculation and amount of damages You are seeking to recover in this Lawsuit." Plaintiffs refused to provide this information, responding on October 31, 2006:

¹ Plaintiffs indicate in their witness list that the testimony of the following individuals concerns response costs: Dan Butler, William L. Cauthron, Julie M. Chambers, Tonyieka (Nikki) Cole, Teena Gunter, Jim Leach, Phillip H. Moershel, Dan Parrish, Shanon Philips, Derek R. Smithee, Janet Stewart, and Paul D. Koenig.

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The State incorporates its general objections set forth herein, and the State further objects that this request seeks information or documents protected by the attorney-client, work product, self-evaluative privilege, or which are made confidential by state law. The State further objects because it seeks documents which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter.

CTP has served numerous other discovery requests, which seek information touching on agency response costs. For example, in its Amended First Set of Interrogatories and Requests for Production, CTP requested documents addressing any aspect of harm via eutrophication or adverse impacts on the environment or water quality or harm to aesthetic uses or recreational uses. See Requests for Production 4-10. Despite both Plaintiffs' supplementation obligations under Rule 26 and specific requests for supplementation by the Cargill Defendants, Plaintiffs have never supplemented their responses to these discovery requests. Finally, other defendants in this dispute have similarly requested such information. (Dkt. No. 1854: Defs.' Mot. Compel Prod. Expert Materials at 21-22 & nn. 4-10.)

Thus, given the repeated requests by Defendants in this case for information concerning Plaintiffs' damages, which by definition includes any agency response costs, it should come as no surprise to Plaintiffs that Cargill Defendants need Plaintiffs' supplemented responses to adequately examine Plaintiffs' agency response costs witnesses and to properly prepare Cargill Defendants' defense to Plaintiffs' damages allegations. Plaintiffs should now be in a position to fully supplement any request concerning damages, including those that more specifically address agency response costs.

We appreciate your attention to these requests and would appreciate confirmation within a week of Plaintiffs' intentions with respect to these requests. We look forward to hearing from you with respect to this issue.

Very truly yours,



Delmar R. Ehrich

EHRDR:ruhjc
Enclosures
cc: All Counsel of Record
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